

TENNESSEE HUMAN RIGHTS COMMISSION



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**BlueCross BlueShield
of Tennessee**

Tennessee Law & Legislation Update

Celeste Bradley, Associate General Counsel, BlueCross
BlueShield of Tennessee, Inc.
Brian A. Pierce, Esq., Waller Lansden Dortch & Davis

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State Case Law Developments

At-Will Employment Doctrine Strengthened

- Haynes v. Formac Stables, Inc., 2015 WL 1408917 (Tenn. 2015)
- “Public policy underlying the whistleblower protections precludes relief for an employee who merely reports unlawful activity to the person responsible”
- Employee must report to someone else within or outside the company to qualify for the limited exception to the at-will doctrine

More Whistleblower Causation Analysis

- Williams v. City of Burns, 2015 WL 2265531 (Tenn. May 2015)
- Police Captain discharged for reporting Police Chief's fixing of traffic tickets issued to his son
- City's non-retaliatory reasons for termination: violating chain of command and undermined Chief's authority
- Supreme Court: Admission that employer terminated employee because of protected activity was fatal

Supervisor Knowledge of Protected Activity

- Ferguson v. Middle Tenn. St. Univ., 451 S.W.3d 375 (Tenn. 2014)
- Employer argued that employee had not presented any evidence that decision maker had actual knowledge of protected activity
- Appeals Court agreed and overturned jury verdict in favor of employee
- Supreme Court reinstated jury verdict, finding that jury could infer that decision maker had knowledge from proof that others knew and other circumstantial evidence, including temporal proximity

Whistleblower Causation Analysis

- Weaver v. Diversicare Leasing Corp., 2014 WL 3734579 (Tenn. Ct. App. July 2014)
- Employee appealed grant of summary judgment on whistleblower claim
- Appellate Court: no proof to establish required causal link between activity and termination
- Another “knowledge” case where the Court credited testimony that supervisor had no knowledge

Employment Rights for Undocumented Workers

- Torres v. Precision Industries, P.I., Inc., 2014 WL 3827820 (Tenn. Ct. App. 2014)
- Court considered whether an undocumented worker could bring a claim for retaliatory discharge
- Defendant claimed that the employee was not able to perform the job because he was not properly documented
- Court held that the employee still had rights to not be subjected to retaliation and reversed grant of summary judgment

Scope of Protected Activity

- McMillin v. Ted Russell Ford, Inc., 2014 WL 3778617 (Tenn. Ct. App. July 2014)
- Employee of car dealership refused to take test drives without proper license plate and registration documents
- Court held that, although the employee was correct that driving without the proper documents was a violation of law, it was not significant enough of a public policy to overcome the “at-will” doctrine

Common law retaliatory discharge abolished

- Two paths a former employee could take to claim retaliatory discharge: statutory (TPPA) and common law
- Different standard of causation
- Legislature eliminated common law claims arising after July 1, 2014
- All retaliatory discharge claims must now be pursued under the TPPA – “sole cause” analysis

Religious Accommodation

- EEOC v. Abercrombie & Fitch Stores, Inc., 135 S.Ct. 2028 (SCOTUS, 2015)
- Abercrombie failed to hire store clerk because they didn't believe she could comply with "look policy"
- Employer cannot fail to hire applicant where it has knowledge that a religious accommodation is needed
- What constitutes "knowledge" of sincerely held religious belief
- Applicability to THRA?

Disability Accommodations

- EEOC v. Ford Motor Co., Inc., 782 F.3d 753 (6th Cir. 2015)
- *En banc* Court held Ford was not required to allow an employee to telecommute as a reasonable accommodation
- Regular and predictable on-site job attendance was an essential function of job
- Applicability to TDA?

Compensable Time

- Ruffin v. MotorCity Casino, 775 F.3d 807 (6th Cir. 2015)
- Security Guard employees required to monitor radio and respond in case of emergency, even during lunch breaks
- Court held that monitoring the radio was not compensatory time because it was *de minimis*

State Legislative Developments

Guns in Trunks Law - Again

- Effective July 1, 2013, employees who have a valid concealed carry permit may possess weapons or ammunition out of sight in their locked vehicle (T.C.A. 39-17-1313(a))
- Four requirements for protection:
 - Legally parked
 - Locked vehicle
 - On business property
 - Weapon is out of sight while person is not in the vehicle

Guns in Trunks Law – Revisited

- New legislation makes clear that employers may not terminate employees “solely” for possessing a firearm in compliance with the law
- Gives employees an additional protected characteristic on which to claim wrongful termination, another exception to “at-will” rule
- Practical impact?

New Damages Caps under THRA, TPPA, and TDA

- \$25,000 for employers who have between 8 and 14 employees.
- \$50,000 for employers who have between 15 and 100 employees.
- \$100,000 for employers who have between 101 and 200 employees.
- \$200,000 for employers who have between 201 and 500 employees and
- \$300,000 for employers who have more than 500 employees.
- Does not include lost wages

- Individual liability under the THRA removed in all circumstances
- Impacts removability of cases based on diversity of citizenship
- Also limits the personal impact to the alleged wrongdoer, but tort claims remain

Employee Online Privacy Act of 2014

- Effective date: January 1, 2015
- The Employee Online Privacy Act forbids an employer from requiring employees or job applicants to:
 - disclose social media passwords
 - add the employer to their contact list
 - allow access to their social media accounts

What does this mean for employers?

1. Discipline still permitted for violations of Acceptable Use Policy, even on social media
2. No right of privacy on employer devices, networks or online accounts

Negligent Retention and Hiring

- Immunity from negligent retention and hiring claims provided “Certificate of employability” obtained from Court
- Post-hiring knowledge may impose liability

What does this mean for employers?

1. Need to apply for certificate pre-hiring
2. Need to monitor post-hiring employee activity

QUESTIONS AND ANSWERS

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